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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Shawn P. Hester;

Plaintiff,

v.

Autovest, LLC;

Defendant.

No.

**COMPLAINT**

(Jury Trial Demanded)

**I. Preliminary Statement**

1. Plaintiff brings this action for damages based upon Defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* In the course of attempting to collect a debt, Defendant intentionally engaged in deceptive, unfair and abusive debt collection practices in violation of the FDCPA. Plaintiff seeks to recover statutory damages, actual damages, costs and attorney's fees.

## **II. JURISDICTION**

2. Jurisdiction of this Court, over this action and the parties herein, arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue lies in the Phoenix Division of the District of Arizona as Plaintiff's claims arose from acts of the Defendant perpetrated therein.

## **III. PARTIES**

3. Plaintiff is a resident of Maricopa County, Arizona.
4. Plaintiff is a natural person who is allegedly obligated to pay a debt which was incurred for personal, family, or household purposes.
5. Plaintiff is a "consumer" as that term is defined by FDCPA § 1692a(3).
6. Defendant Autovest, LLC is a Michigan limited liability company registered to do business within the state of Arizona.
7. Autovest regularly uses the courts in Arizona to collect consumer debts.
8. Autovest collects or attempts to collect debts which it claims to have purchased or been assigned after default.
9. Autovest is a "debt collector" as that term is defined by FDCPA § 1692a(6).

## **IV. Factual Allegations**

10. In May 2007, Plaintiff entered into a Motor Vehicle Retail Installment Sales Contract and Purchase Money Security Agreement ("RISC") with Earnhardt's Gilbert Dodge, Inc. in order to purchase a used 2007 Chrysler PT Cruiser.
11. The purchase of the Chrysler, and the resulting debt, were incurred for personal, family, or household purposes.

- 1 12. Earnhardt Dodge immediately assigned the RISC to Wells Fargo Bank,  
2 N.A.
- 3 13. Sometime later, in or about 2009, Plaintiff was unable to continue  
4 making payments to Wells Fargo, and defaulted on the RISC.
- 5 14. Wells Fargo repossessed the Chrysler in 2010.
- 6 15. Wells Fargo subsequently sold the Chrysler and claimed a deficiency  
7 balance owing under the contract.
- 8 16. Sometime thereafter, Autovest claimed that it had purchased Plaintiff's  
9 Well Fargo debt, and initiated collection action.
- 10 17. On March 18, 2014, Autovest filed a lawsuit against Plaintiff in the  
11 East Mesa Justice Court in Maricopa County, Arizona in an attempt to  
12 collect the deficiency balance from Plaintiff.
- 13 18. On or about May 28, 2014, Autovest provided Plaintiff with a packet of  
14 documents including an affidavit from an Autovest employee, and five  
15 exhibits.
- 16 19. In the cover letter from Autovest's counsel, it states that this packet  
17 "may be used with a future motion for judgment," and is "intended to  
18 supplement Plaintiff's prior disclosure statement."
- 19 20. The employee affidavit is signed by Christina Stiles, Records Manager  
20 for Autovest. (A copy of Stiles Affidavit is attached hereto as Exhibit  
21 1).
- 22 21. One of the exhibits attached to the packet, is titled an Assignment of  
23 Installment Contract ("Assignment"). (A copy of the Assignment is  
24 attached hereto as Exhibit 2).
- 25 22. In the affidavit, Stiles states in paragraph 11 that "A true and accurate

1 copy of the Assignment of Installment Contract [is] attached hereto as  
2 Exhibit 'E'."

3 23. The Assignment is signed as follows:

4 ASSIGNOR:

5 Wells Fargo Bank, N.A.

6 BY /s/ Darren Kazich  
7 Darren Kazich, Agent

8 24. The alleged "agent," Darren Kazich, is an employee of Autovest, not  
9 Wells Fargo.

10 25. Both the Stiles Affidavit and the Assignment were attached to support  
11 Autovest's motion for summary judgment filed in the justice court  
12 lawsuit.

13 26. Specifically, in the motion for summary judgment, Autovest used the  
14 Affidavit and the Assignment as its sole support that "Wells Fargo  
15 Financial, Inc. sold and assigned all of its rights and obligations of the  
16 credit account to Plaintiff."

17 27. Autovest routinely uses these "Assignment" forms to falsely represent  
18 that the statement is signed by Wells Fargo, not Autovest.

19 28. Autovest purposefully uses the misleading Assignment to falsely  
20 represented that Wells Fargo provided the Assignment to show that  
21 Plaintiff's RISC had been assigned to Autovest.

22 29. At the time Autovest disclosed the Affidavit and Assignment of Install-  
23 ment Contract, it knew, or should have known, that its misrepresentati-  
24 on as to the origination of the Assignment was false and misleading to  
25 the least sophisticated consumer.

1 30. At the time Autovest used the Affidavit and Assignment to support its  
2 motion for summary judgment, it knew, or should have known, that the  
3 misrepresentation of the origin of the Assignment would be false and  
4 misleading to the least sophisticated consumer.

5 31. As a result of Defendant's actions as outlined above, Plaintiff has  
6 suffered actual damages including, but not limited to, legal expenses,  
7 anxiety, worry, and other emotional distress.

8 32. Defendant's actions as outlined above were intentional, willful, and in  
9 gross or reckless disregard of Plaintiff's rights, and part of Defendant's  
10 persistent and routine practice of debt collection.

11 33. In the alternative, Defendant's actions were negligent.

## 12 **V. Causes of Action**

### 13 **a. Fair Debt Collection Practices Act**

14 34. Plaintiff repeats, realleges, and incorporates by reference the foregoing  
15 paragraphs.

16 35. Defendant's violations of the FDCPA include, but are not necessarily  
17 limited to, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(10), and  
18 1692e(14).

19 36. As a direct result and proximate cause of Defendant's actions in viola-  
20 tion of the FDCPA, Plaintiff has suffered actual damages.

## 21 **VI. DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial on all issues so triable.

## 23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests that judgment be entered against  
25 Defendant for:

- 1 a) Actual damages under the FDCPA;
- 2 b) Statutory damages under the FDCPA;
- 3 c) Costs and reasonable attorney's fees pursuant to the FDCPA; and
- 4 d) Such other relief as may be just and proper.

5  
6 DATED March 31, 2015.

7  
8 s/ Floyd W. Bybee  
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